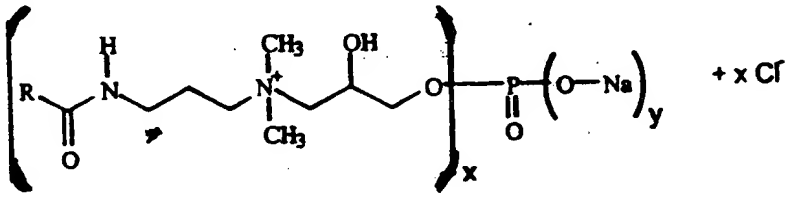
I. The Rejection of Claims 1 – 19 under 35 USC §103(a) as Being Unpatentable Over Liu or Mason Over Fost '348 or Mayhew Should Be Withdrawn

Claims 1 – 19 stand rejected under 35 USC §103(a) as being unpatentable over Liu or Mason, in combination with Fost '348 or Mayhew. Applicants respectfully disagree for the reasons that follow.

As stated in the Office Action, Liu and Mason neither disclose nor suggest the use of phospholipids. Therefore, Applicants further respectfully submit that Liu and Mason also fail to disclose or suggest the use of the particular antifungal amphoteric phospholipids having the specific structure set forth below:



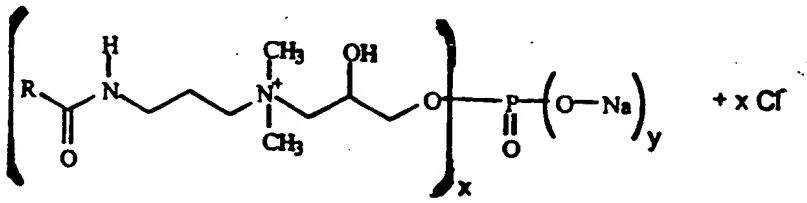
Wherein R represents a straight, saturated, mono-unsaturated, or poly-unsaturated C7-19 alkyl group; x represents 1, 2, or 3; and x+y = 3; and mixtures thereof, and

as claimed in claim 1, claim 3, and claim 6.

Fost '323 fails to disclose or suggest the particular antifungal amphoteric phospholipid having the specific structure set forth above and claimed in claims 1, 3 and 6. Therefore, Applicants respectfully submit that the composition that would result from combining the phospholipids of Fost '323 with the antifungal containing compositions of Liu and Mason as proposed in the Office Action still would not meet the terms of claim 1. More specifically, the resulting combination would still lack the particular antifungal phospholipid having the structure set forth above as specifically claimed in claims 1, 3, and 6. For example, the phospholipids of the Fost references lack the acyl group present in the claimed phospholipid.

As recognized in Fost '348 itself, not all phospholipids are capable of exhibiting antimicrobial properties without also being extremely irritating to the skin. See Fost '348, column

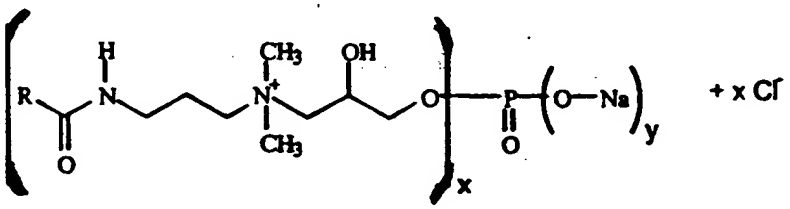
1, lines 23 – 51. In fact, Mayhew fails to disclose or suggest whether or not the phosphate compounds disclosed therein exhibit antimicrobial properties. Therefore, absent any other disclosure or suggestion in the art, Applicants respectfully submit that one skilled in the art would not know that the particular phospholipid as claimed and set forth below



Wherein R represents a straight, saturated, mono-unsaturated, or poly-unsaturated C7-19 alkyl group; x represents 1, 2, or 3; and x+y = 3; and mixtures thereof;

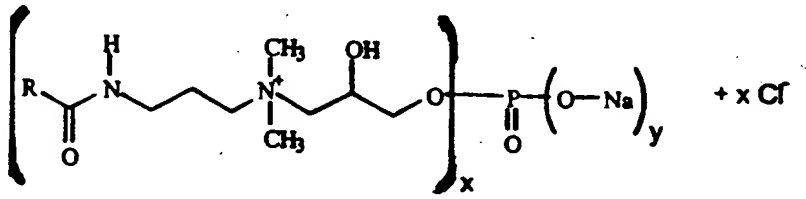
would provide effective antifungal properties without the undesirable irritation properties when used in combination with the antifungal "inhibiting fungal ergosterol biosynthesis" ingredient in a cleansing composition.

According the Office Action, "[t]he inclusion of a phospholipid... would have been obvious to one of ordinary skill in the art since the secondary references clearly teach the excellent properties of the phospholipids." However, the secondary references neither disclose nor suggest that the particular phospholipid having the below structure:



Wherein R represents a straight, saturated, mono-unsaturated, or poly-unsaturated C7-19 alkyl group; x represents 1, 2, or 3; and x+y = 3; and mixtures thereof, and

possesses antifungal properties. Therefore, one skilled in the art looking for an improved antifungal cleansing composition would not be motivated to consider the phospholipid cleansing compounds of Fost '348 or Mayhew because the references neither disclose nor suggest the particular antifungal phospholipid having the below structure:



Wherein R represents a straight, saturated, mono-unsaturated, or poly-unsaturated C7-19 alkyl group; x represents 1, 2, or 3; and x+y = 3; and mixtures thereof;

and/or are silent about the antifungal properties of such a phospholipid.

In view of the above, Applicants respectfully submit that claim 1, claim 3, and claim 6 are patentable over Mason or Liu and further in combination with Fost '348 and Mayhew, and that the rejection of claim 1 and claim 6 under 35 USC §103(a) has been overcome and should be withdrawn.

Claims 4 – 5, 14, and 19, which depend upon claim 1 and incorporate all its limitations therein, and claims 7 — 15 and 17 - 18 which depend upon claim 6 and incorporate all of its limitations therein, are likewise patentable over Mason or Liu and further in combination with Fost '348 and Mayhew, and that the rejection of these claims under 35 USC §103(a) has also been overcome and should be withdrawn.

In view of the fact that Applicants unexpectedly found that the claimed active ingredients unexpectedly possessed a synergistic effect on the growth of *M. furfur,* Applicants respectfully submit that none of the cited references disclose or suggest the creation of a composition

containing the claimed active ingredients in quantities producing "a mutual synergistic effect on the inhibition of the growth of Malassezia furfur" as claimed in claim 4.

Because none of the references disclosed the combination of the claimed antifungal with the claimed amphoteric phospholipid, let alone the above mentioned synergistic effect exhibited by such a combination, Applicants further respectfully submit that none of the prior art references disclose or suggest the percentage amount of each claimed component as set forth in claim 5.

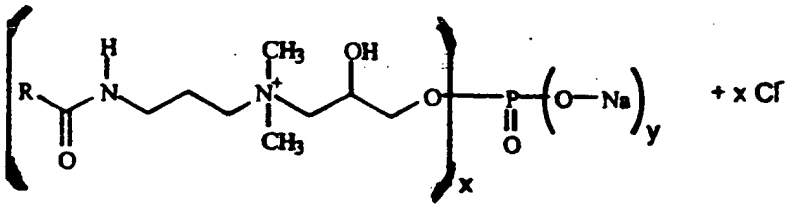
In addition, in view of the fact that none of the prior art references disclosed or suggested the claimed composition of claim 1, Applicants further respectfully submit that the process for making such a composition set forth in claim 14 is also neither disclosed nor suggested in the prior art.

In view of the cancellation of claims 2 and 16, the arguments set forth above for claim 1, claim 3, and claim 6, and the additional arguments set forth above for the dependent claims, Applicants further respectfully submit that the rejection of claims 1 to 19 under 35 USC §103(a) has been overcome and should be withdrawn.

II. The Rejection of Claims 1, 3 – 15, and 17 – 23 under 35 USC §103(a) as Being Unpatentable Over Liu or Mason, and Further Over Fost '348 or Mayhew, and further in combination with GB '139 Should Be Withdrawn

Claims 1 – 19 stand rejected under 35 USC §103(a) as being unpatentable over Liu or Mason, in combination with Fost '348 or Mayhew, and further in combination with GB '139. Applicants respectfully disagree for the reasons set forth above and the ensuing discussion.

Applicants respectfully submit that the particular phospholipid having the below structure:



Wherein R represents a straight, saturated, mono-unsaturated, or poly-unsaturated C7-19 alkyl group; x represents 1, 2, or 3; and x+y = 3; and mixtures thereof, and

which is claimed in claims 1, 3, and 6 is neither disclosed nor suggested in GB '139. As recognized in Fost '348 itself, not all phospholipids are capable of exhibiting antimicrobial properties without also being extremely irritating to the skin. See Fost '348, column 1, lines 23 – 51.

Therefore, because: 1) GB '139 fails to disclose or suggest the particular phospholipid claimed, let alone whether or not such phospholipids have antimicrobial properties; 2) not all phospholipids are capable of exhibiting antimicrobial properties without also being extremely irritating to the skin as expressly provided in Fost '348; and 3) of the reasons set forth in Part I. of this Response, Applicants respectfully submit that the rejection of claims 1, 3 – 15, and 17 – 23 over Liu or Mason, in combination with Fost '348 or Mayhew, and further in combination with GB '139, has been overcome and should be withdrawn.

Conclusion

It is submitted that the foregoing amendments and remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

Respectfully submitted,

By: _____
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Dated: 17 July 2003

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450 on

17 July 2003
(Date of Deposit)

Michele Mangini
(Name of applicant, assignee, or Registered Representative)

(Signature)

17 July 2003
(Date of Signature)